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5 Sorrell, and all others similarly situated

6 **UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF NEVADA**

8 IN RE: INTERNAL REVENUE ) MDL No. 1878  
SERVICE § 1031 TAX DEFERRED ) Case No. 2:07-cv-01394-RCJ-LRL  
9 EXCHANGE LITIGATION )

10 Sorrell, et al. v. Southwest Exchange, ) **ORDER GRANTING**  
11 Inc., et al. ) **MOTION FOR PAYMENT OF**  
 ) **ATTORNEYS' FEES AND**  
 ) **REIMBURSEMENT OF COSTS OUT**  
12 ) **OF THE WAVE V MEDICOR**  
 ) **SETTLEMENT**  
13 )

14 WHEREAS, Defendant Medicor, Ltd. ("Medicor") entered into a settlement  
15 agreement (the "Settlement Agreement"), whereby Medicor will pay \$3,950,000 to fully  
16 resolve the above captioned matter, as well as any and all related litigation filed against it by  
17 the clients of Southwest Exchange, Inc. ("SWX") who opted-out of the Settlement Class and  
18 who are prosecuting individual actions in the state court action styled *In Re: Receivership of*  
19 *Southwest Exchange, Inc. and Consolidated Litigation*, Case No. 07-A-53549-B (the "State  
20 Court Consolidated Actions"), pending before the Honorable Elizabeth Gonzalez. Medicor is  
21 referred to herein as the "Settling Defendant".

22 WHEREAS, on March 30, 2010, the Court issued an Order Preliminarily Approving  
23 the Settlement Agreement and setting April 9, 2010 as the deadline by which Class Counsel  
24 Hollister & Brace ("H&B") was required to issue the Court approved notice (the "Notice") to  
25 inform all potential class members of the terms of the Settlement Agreement and their rights  
26 related thereto, including their right to opt-out of the Settlement Class.

1 WHEREAS, proof that H&B issued the Notice as required by the Preliminary  
2 Approval Order has been filed with the Court.

3 WHEREAS, certain potential Settlement Class members opted-out of the Settlement  
4 Class, but agreed to be bound by the Settlement Agreement and to share in the settlement  
5 proceeds on a pro-rata basis. These claimants will be referred to as the "Opt-Outs."

6 WHEREAS, the settlement proceeds total \$3,950,000;

7 WHEREAS, the Exchangers' Loss Amounts<sup>1</sup> total \$97,449,631.39. The ratio between  
8 the Loss Amount attributable to the Opt-Outs and the Settlement Class is 57.58% (Opt-Outs)  
9 as compared to 42.42% (Settlement Class).<sup>2</sup> It is proposed that the settlement funds totaling  
10 \$3,950,000 shall be divided between the Settlement Class and the Opt-Outs based upon these  
11 percentages.

12 WHEREAS, applying the above percentages to the \$3,950,000 provides that the  
13 Settlement Class is allocated \$1,675,707.34 and the Opt-Outs are allocated \$2,274,292.66

14 WHEREAS, pursuant to the terms of the Fee Agreements entered into by Class  
15 Counsel H&B and each of its clients, H&B requested the Court to award H&B attorneys' fees  
16 equal to 25% of the "Net Settlement".

17 WHEREAS, the Net Settlement is the gross portion of the settlement contribution  
18 allocable to the Settlement Class (\$1,675,707.34), less deductions for approved unreimbursed  
19 litigation costs and expenses, which, through April 30, 2010, total \$8,885.77. Thus, the  
20 Settlement Class' Net Settlement is \$1,666,821.57.

21 WHEREAS, the requested Class Counsel fee is 25% of that Net Settlement Amount, or  
22 \$416,705.39.

23  
24  
25 <sup>1</sup> Individual Exchangers' "Loss Amounts" are calculated based upon the amount of money deposited with SWX  
26 (or with SWX's affiliates or subsidiaries QES and Arrow 1031 Exchange, which along with SWX are  
collectively referred to herein as "SWX") by each client which was lost at the time of the failure of SWX.

27 <sup>2</sup> The actual percentage share of the Opt-Outs is 57.5770293531944%. The Class Members' Share  
28 is 42.4229706468056%.

1 WHEREAS, the Net Settlement (\$1,666,821.57) less the requested fee (\$416,705.39)  
2 leaves \$1,250,116.18 from the Class portion of the Settlement Funds to be distributed to the  
3 Settlement Class Members. It is proposed that the \$1,250,116.18 should be distributed to  
4 Settlement Class Members on a *pro-rata* basis with each Member receiving an amount  
5 calculated as follows:

$$\frac{\text{(Member's Loss Amount)}}{\text{(Total Members' Loss Amounts)}} \times \text{(Amount Available for Distribution)}$$

8 WHEREAS, H&B's Motion to approve the payment of fees and costs as set forth  
9 herein was supported by the Declaration of Michael P. Denver of H&B.

10 NOW THEREFORE, based upon the submissions of the parties, the pleadings on file,  
11 the arguments of counsel and the lack of Objection by parties to this litigation or any other  
12 interested parties, the Court hereby GRANTS H&B's Motion regarding the reimbursement of  
13 H&B's costs and the payment of a 25% contingency fee. The Court hereby FINDS that the  
14 Class Counsel fee request is fair, reasonable and appropriate. It is hereby ORDERED,  
15 ADJUDGED and DECREED that the payment of attorneys fees and costs are awarded as  
16 follows:

17 The Court approves the division of the settlement funds totaling \$3,950,000 as  
18 follows: 42.42% to the Settlement Class, or \$1,675,707.34; and, 57.58% to the Opt-Outs, or  
19 \$2,274,292.66. The Opt-Outs' share (\$2,274,292.66) of the settlement proceeds are to be  
20 distributed by the QSF Administrator to the Opt-Outs pursuant to the Orders and/or  
21 instructions of the Court in the related State Court Consolidated Actions.

22 The Court finds that between May 1, 2009 and April 30, 2010 reasonable  
23 unreimbursed costs of litigation benefitting the Settlement Class have been incurred by H&B  
24 with respect to this settlement in the amount of \$8,885.77. The reimbursement of this amount  
25 out of the Settlement Class' portion of the settlement proceeds is approved and the QSF  
26 Administrator is directed to make this payment to H&B as soon as practicable.

27 The Settlement Class' share of the settlement funds (\$1,675,707.34) less the approved  
28 expenses (\$8,885.77) provides a Net Settlement of \$1,666,821.57.

1 The Court approves the payment of a Class Counsel contingency fee equal to 25% of  
 2 the Settlement Class' Net Settlement (\$1,666,821.57x .25%), or \$416,705.39. Payment of the  
 3 approved Class Counsel fee shall be issued by the QSF Administrator out of the Settlement  
 4 Class' portion of the Settlement proceeds to H&B as soon as practicable.

5 The award of Class Counsels' attorneys' fees and reimbursement of costs arising out  
 6 of the Settlement is limited to the settlement funds recovered and actually distributed. The  
 7 award does not affect H&B's rights to seek additional fees and reimbursement of costs from  
 8 other recoveries, including settlements reached with, or verdicts or Judgments obtained  
 9 against, other non-settling defendants.

10 It is hereby ORDERED, ADJUDGED and DECREED that, as soon as practicable,  
 11 Larry Bertsch shall distribute the remaining portion of the Settlement Class' recovery after the  
 12 payment of the approved fees and costs (\$1,250,166.18) out of the QSF to Settlement Class  
 13 Members on a *pro-rata* basis calculated as follows:

14  $(\text{Member's Loss Amount}) / (\text{Total of Members' Loss Amounts}) \times (\text{Distribution Amount})$ .

15 As soon as practicable, Mr. Bertsch shall submit an accounting to the Court  
 16 demonstrating that the distribution of settlement funds was accomplished in conformity with  
 17 this Order.

18  
 19 IT IS SO ORDERED.

20  
 21 Dated: August 3, 2010.

By: 

The Hon. Robert C. Jones  
 United States District Court Judge